KD. & Cw Supplement

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No. 81-5634

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

RICKY WAYNE TISON and
RAYMOND CURTIS TISON,

Petitioners

v.

STATE OF ARIZONA,

Respondent

CONTINUED
JOINT PETITION FOR WRITS OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

THIS IS A CAPITAL CASE

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ADDITIONAL QUESTIONS PRESENTED

2. May a state court find a waiver of issues under Miranda v. Arizona, 384 U.S. 436 (1966), although counsel requested a pretrial hearing on a motion to suppress at which voluntariness was clearly urged and all parties asked questions relating to compliance with Miranda, but defense counsel failed to specifically mention Miranda, the Fifth Amendment, or the Sixth Amendment in his oral argument?

3. Does it violate due process for a state court to refuse to review the correctness of conspiracy instructions which were offered as a basis for convicting the defendant of murder, on the grounds that the defendant was not convicted of conspiracy?

4. Does it violate due process to permit a jury to convict a defendant of murder upon a finding that the defendant conspired to aid and abet another's escape from prison, and that the escapee committed an unplanned murder thirty-six hours after the prison escape?

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OPINIONS BELOW

The opinions and judgments of the Supreme Court of Arizona sought to be reviewed are not yet officially reported, but they are reproduced in the Appendix attached to the original petition in this case. The opinion in the case of petitioner Ricky Wayne Tison is reproduced as Appendix Exhibit A(1a). The judgment in the case of petitioner Ricky Wayne Tison is reproduced as Appendix Exhibit E (87a). The opinion in the case of petitioner Raymond Curtis Tison is reproduced as Appendix Exhibit B(36a). The judgment in the case of petitioner Raymond Curtis Tison is reproduced as Appendix Exhibit G(90a).

JURISDICTION OF THE SUPREME COURT

Petitioner Ricky Tison was convicted of murder, kidnapping, robbery, and theft of a motor vehicle in the Superior Court of Yuma County, Arizona, on February 27, 1979. Petitioner Raymond Tison was convicted of the same crimes in the Superior Court of Yuma County, Arizona, on March 6, 1979. Petitioners were both sentenced to death for the murders and to prison terms for the remaining crimes on March 29, 1979. (67a-69a).

On July 9, 1981, the Supreme Court of Arizona affirmed Ricky Tison's convictions and sentences. (87a). On the same day, the Court affirmed Raymond Tison's convictions and sentences. (90a). Timely petitions for rehearing submitted by both petitioners were denied on September 10, 1981, (89a, 92a), and this joint petition for writs of certiorari was filed within 60 days of that date.

Petitioners asserted below and assert here a deprivation of their rights as guaranteed by the United States Constitution. This Court's jurisdiction is invoked under Title 28, United States Code, Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV, Section 1 to the Constitution of the United States, in part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State Statutes

1. Laws of 1971, Ch.78, §2, Ariz. Rev. Stat. Ann. §13-331 (Supp. 1957-1978) (Amended 1975) (Repealed 1978).

> A. A person is guilty of conspiracy in the first degree if, with intent to commit, or to have another person commit, any action constituting murder, kidnapping, extortion, robbery, forcible rape, aggravated assault, or any felony enumerated in title 32, chapter 18 [1] or title 36, chapter 9 [2], he conspires with one or more persons to engage in or cause the commission of such. Conspiracy in the first degree is punishable by imprisonment in the state prison for not more than thirty years.
>
> B. A person is guilty of conspiracy in the second degree if, with the intent to commit or to have another person commit, any action constituting any felony other than those listed in subsection A, he conspires with one or more persons to engage in or cause the commission of such. Conspiracy in the second degree is punishable by imprisonment in the state prison for not less than one year nor more than four years or a fine not exceeding one thousand dollars, or imprisonment in the county jail for not more than one year, or both.
>
> C. A person is guilty of conspiracy in the third degree if, with the intent to commit, or to have another person commit, any action constituting a misdemeanor, he conspires with one or more persons to engage in or cause the commission of such. Conspiracy in the third degree is punishable by a fine of not more than three hundred dollars, by imprisonment in the county jail for not more than six months, or both. Added Laws 1971, Ch. 78, §2. As amended Laws 1975, Ch. 22, §1.

2. Ariz. Code of 1939, 43-1192; Ariz. Rev. Stat. Ann. §13-332 (1956) (Repealed 1978).

> No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy unless some act besides such agreement is done to effect the object thereof by one or more of the parties to the agreement.

NOTE: The preceding statutes were those in effect at the time of the crimes for which petitioners stand convicted. They were then repealed and replaced when Arizona revised its criminal code, effective October 1, 1978.

[1] Section 32-1901 et seq.
[2] Section 36-1001 et seq.

STATEMENT OF THE CASE

A. Statement of Facts

On July 30, 1978, petitioners Ricky Wayne Tison, then age 19, and Raymond Curtis Tison, then age 18, went with their older brother Donald to visit their father, Gary Tison, at the Arizona State Prison. (37a) Gary Tison was serving a life sentence for murder, as was a friend of his, Randy Greenawalt. (2a) Petitioners and their brother entered the prison about 9 a.m. and produced weapons from an ice chest. (37a) They passed a hand gun to Greenawalt, who was a trusty in the control room of that portion of the prison. (37a) The group then locked numerous guards and visitors into a closet, and walked out the front door about 9:30 a.m. (37a) They drove away from the prison parking lot, abandoned their car for a waiting white Lincoln, and drove away on back roads. (2a; Transcript of Trial of Ricky Wayne Tison, hereinafter cited as "Ricky's Tr.", 2/22/79, p. 462).

The evidence tended to show that the car in which the men were riding had a flat tire the night after the escape, and that the men flagged down the next car which drove by in the early morning hours of August 1. (3a) The car was an orange Mazda driven by John Lyons. His wife, their two-year-old child, and their teenage niece, Theresa Tyson, were with him. (2a) When the car stopped, guns were drawn by the Tisons and Greenawalt, and both cars were driven several miles down a dirt road off the main highway. (3a; Ricky's Tr. 2/22/79, p. 463). The vehicles were then parked trunk to trunk, and the Tisons' possessions were put in the Mazda. (3a, Ricky's Tr. 2/22/79, p. 463). The Lyons' possessions were then put in the Lincoln, and John Lyons' money and weapons were taken. (3a; Ricky's Tr.

2/22/79, p. 478, Ricky's Tr. 2/21/79, p. 218). The Lincoln was then driven a little further into the desert. (3a; Ricky's Tr. 2/22/79, p. 463). Gary Tison and Greenawalt shot some holes in the Lincoln, and the Lyons and Theresa Tyson were placed in it. (Ricky's Tr. 2/22/79, p. 463). Gary then sent petitioners back to the Mazda for some water (Id.) Upon their return, Randy Greenawalt and Gary Tison shot the victims. (3a; Ricky's Tr. 2/22/79, pp. 463-64).

Gary Tison, Greenawalt, petitioners, and their brother Donald then drove away in the Mazda (4a). Petitioners later helped to purchase spray paint which was used to disguise the car. (4a; 48a). After a few days the Mazda was abandoned near Flagstaff, Arizona, and was replaced by a Chevrolet pick-up obtained through a friend of Randy Greenawalt's. (4a; 49a; Ricky's Tr. 2/21/79, pp. 302, 314).

They then drove to Colorado. While they were there, a young couple, James and Margene Judge, were murdered. (Joint Sentencing Hearing, 3/14/79, pp. 12-13). The group was in the Judges' van when apprehended. (2a; 38a; Joint Sentencing Hearing, 3/14/79, pp. 11-12). There was no evidence that Ricky or Raymond played any part in the Judges' murder and neither has been tried for them.

Around 3:00 in the morning of August 11, the men came to a roadblock near Casa Grande, Arizona. The van slowed down and then accelerated through the roadblock. (2a, 74a). Shots were fired and two police cars chased the van to a second roadblock. (74a). Officers fired at the van as it ran the second roadblock and came to a stop in the desert. (2a, 74a). In the driver's seat the officers found Donald Tison, who has been shot in the head and later died of the wounds. (3a, 74a). The police found petitioners and Randy Greenawalt nearby in the desert. Gary

Tison was found dead in the desert several days later. (3a, 74a).

After Ricky Tison was arrested, his clothes were cut off with a knife (Proceedings at Motion to Suppress, 12/4/78, reproduced as Appendix Exhibit L, see pp. 144a-145a) and he was strip searched at approximately 4:30 a.m. (id.). Some of his brother Donald's blood was on him. (14a, 133a). He was placed in the back of a pickup truck and then, while still nude, was placed in a vehicle with three officers. (14a, 122a-123a). After being advised of his Miranda rights and given a blanket, he answered most of the questions asked of him. (14a). During the interview Officer Martinez suggested that Ricky might be taken back to see his brother Donald. (14a, 142a). The interview lasted approximately ten to fifteen minutes and terminated without the officers obtaining the information they sought. (14a).

At approximately 7:00 a.m., Sgt. Salyer and Officer Sanchos interviewed Ricky in the back of a car. (14a). Ricky was still nude but had a blanket. (14a). He began to talk after being told his Miranda rights again. (14a). After some preliminary questioning Ricky said that "he didn't want to talk any more." (Ricky's Tr. 2/22/79 p. 459). Sgt. Salyer testified to the ensuing events:

"At this time I started to get out of the car when someone came by and mentioned something about footprints.

Q. Did you return to the car at that time?

A. I hadn't left the car.

Q. What did you say at that time?

A. I told Ricky that there had been footprints found around the scene of the Lincoln and I asked him about what type shoes he was wearing. Again he became excited and said, 'All I know is that me and my brothers didn't shoot those people.'

Q. What was your next statement?

A. I said, 'Okay, I didn't say you shot those people. I'm just trying to find out what happened.'"

(15a, Ricky's Tr. 2/22/79 pp. 459-60)

Further questioning by Sgt. Salyer prompted numerous statements which were introduced at Ricky's trial. (15a, Ricky's Tr. 2/22/79 pp. 460-466).

After the interview Ricky Tison was taken to jail in Florence, Arizona, where he was interviewed by two more police officers. (15a). This time he was both nude and without a blanket. (15a). After telling Ricky of his Miranda rights, Officer Brawley asked Ricky "if he wanted to make a statement." (Ricky's Tr. 2/22/79 p. 473). After Ricky said that "he didn't at that time," Officer Brawley asked Ricky the whereabouts of Theresa Tyson and Gary Tison. (Ricky's Tr. 2/22/79 p. 474). Ricky's answers to these questions and to others were introduced at his trial. (Ricky's Tr. 2/22/79 pp. 474-478). At the suppression hearing, the judge found that Ricky's statements were voluntarily made and that he had understood his Miranda rights and waived them. (170a).

Petitioners were tried jointly with Greenawalt in Pinal County, Arizona, for crimes occurring at the prison and the roadblock. They were each convicted of seventeen counts of assault with a deadly weapon, and one count each of aiding and assisting an escape, possession of a stolen motor vehicle, and unlawful flight from a pursuing law enforcement vehicle. In addition, Ricky Tison was convicted of taking prohibited articles into prison. (74a) Petitioners were given concurrent sentences of 30 years to life for each of the assaults. They were given sentences of four to five years for each of the other offenses, to be served concurrently with each other but consecutively to the

assault sentences. (75a) The convictions and sentences were affirmed by the Arizona Supreme Court in State v. Greenawalt, et. al., 128 Ariz. 388, 626 P.2d 118, cert. den. Tison v. Arizona, ____ U.S. ____, 50 U.S.L.W. 3247 (1981). The opinion is attached as Exhibit D of the Appendix.

Petitioner Picky Tison was tried for and convicted of murder, kidnapping, robbery, and theft of a motor vehicle in Yuma County, Arizona. Petitioner Raymond Tison was convicted of the same crimes in a trial immediately following Ricky's.[1]

Petitioners then underwent a joint sentencing hearing before the trial judge. He sentenced them to death for the murders and to prison terms for the remaining crimes (67a-69a). Accompanying the sentence was a special verdict required by Arizona law containing the aggravating and mitigating circumstances found by the judge in imposing the sentences of death. (59a-65a, 105a). The aggravating circumstances found that pertained to the nature of the crime were precisely those found by the same judge when he sentenced Randy Greenawalt to death.

The Supreme Court of Arizona affirmed both petitioners' convictions and sentences. State v. Ricky Wayne Tison, No. 4612 (Ariz., filed July 9, 1981), attached as Exhibit A of the Appendix; State v. Raymond Curtis Tison, No. 4624 (Ariz., filed July 9, 1981), attached as Exhibit B of the Appendix. These judgements are those petitioners now seek to have reviewed by this Court.

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[1] Randy Greenwalt was also convicted of murder, armed robbery, kidnapping, and theft of a motor vehicle. He was sentenced to death for the murders and given prison sentences for the other offenses. His convictions and sentences were affirmed by the Arizona Supreme Court in State v. Greenwalt, 128 Ariz. 150, 624 P. 2d 828, cert. den. ___ U.S. ___, 50 U.S.L.W 3250 (1981).

B. How The Federal Constitutional Issues Were Raised and Decided Below

The issue of when a state court may find a waiver of rights under Miranda v. Arizona, 384 U.S. 436 (1966), first arose below when the Arizona Supreme Court held in its opinion in State v. Ricky Wayne Tison, No. 4612, that waiver had occurred because of a failure to raise Miranda and Sixth Amendment issues at the pretrial suppression hearing. (13a). The hearing itself was held December 4, 1978, and the section dealing with the suppression of petitioner Ricky Tison's statements is attached as Exhibit "L" to the Appendix (108a-175a).

The issue of when a state court may refuse to review the content of instructions to the jury first arose below when the Arizona Supreme Court in its opinions refused to review the content of the conspiracy instructions on the ground that petitioners had not been convicted of conspiracy (17a, 39a). The specific problems with the conspiracy instructions described in this petition were not raised at the trial level, although the instructions were objected to as a whole on other grounds. (Ricky's Tr. 2/23/79, pp. 561-63; Raymond's Tr., 3/2/79, p. 383). The specific problems with the instructions described in this petition were raised as error on appeal (Brief for Appellant at 53-54, State v. Ricky Wayne Tison, No. 4612 (Ariz.); Brief for Appellant at 44-45, State v. Raymond Curtis Tison, No. 4624 (Ariz.) and were responded to by the State without argument that those issues had been waived. (Brief for Appellee at 35, State v. Ricky Wayne Tison, No. 4612 (Ariz.); Brief for Appellee at 31-32, State v. Raymond Curtis Tison, No. 4624 (Ariz.).

The issue of the due process limits upon imputing criminal responsibility for the acts of another was raised at the

trial level by petitioner Ricky Tison's attorney when he objected to the court's refusal to give the defendant's requested jury instruction on proximate cause. (Ricky's Tr., 2/23/79, pp. 559-60). Petitioner Raymond Tison's trial commenced on February 28, 1979, the day after Ricky Tison's trial had ended. The trial judge gave virtually the same instructions to Raymond Tison's jury as he had given to Ricky Tison's jury. Raymond Tison's attorney did not renew Ricky Tison's attorney's objection to the jury instructions concerning proximate cause, although on February 16, 1981, he had filed a joinder "in all Motions filed in this matter and all Memoranda of Law filed this matter by co-defendant's [Ricky Tison's] counsel, Michael F. Beers on February 14, 1979 and thereafter." The issue was raised on appeal by both petitioners (Brief for Appellant at 57-59, State v. Ricky Wayne Tison, No. 4612 (Ariz.); Brief for Appellant at 48-49, State v. Raymond Curtis Tison, No. 4624 (Ariz.)) and decided adversely to them by the Arizona Supreme Court. (20a, 39a).

REASONS FOR GRANTING THE WRIT

II. Petitioner Ricky Wayne Tison's case presents the important issue of whether a state court can properly find a waiver of rights under Miranda v. Arizona, 384 U.S. 436 (1966), where counsel requested a pretrial hearing on a motion to suppress at which voluntariness was clearly put in issue and all parties asked questions relating to compliance with Miranda but defense counsel failed to mention specifically Miranda, the Fifth Amendment, or the Sixth Amendment in his oral argument.

The continued interrogation of Ricky Wayne Tison after his statement in response to questioning that he "didn't want to talk anymore" or "didn't want to make a statement" was in violation of Miranda v. Arizona, 384 U.S. 436 (1966), Edwards v. Arizona, ___ U.S. ___ , 68 L.Ed.2d 378 (1981) and Rhode Island v. Innis, 446 U.S. 291 100 S.Ct. 1682 (1980). Yet the Arizona Supreme Court refused to consider this issue on the grounds that the defendant failed to raise any Fifth or Sixth Amendment issues at the suppression hearings held before the trial court and therefore waived those issues on appeal. (13a).

The question of whether or not a defendant has relinquished or intentionally waived his federal constitutional rights is itself a federal question. Fay v. Noia, 372 U.S. 391, 439 (1963). Where this court has found that the facts do not support a waiver finding, it has acted to insure that the states respect those rights. Ibid. While petitioner Ricky Tison presented no written motion or oral argument at the suppression hearing which specifically mentioned the Fifth and Sixth Amendments or Miranda v. Arizona, supra, it is apparent from the review of the record that the issue was raised and actually

decided in the trial court. The questioning at the hearing on the Motion to Suppress held December 4, 1978, focused on the recitation of Miranda rights and the statements which immediately followed. (123a-124a, 152a-153a, 160a, 164a) All of the information necessary to determine compliance with Miranda was elicited from the witnesses. The prosecutor argued compliance with Miranda and not just voluntariness. (168a) Furthermore, the trial court found not only that the statements were "freely and voluntarily made," but also stated, "I think they understood their rights and they waived them." (170a, emphasis added) Thus, the trial court clearly decided the Miranda issues. Significantly, on appeal, the Arizona Attorney General never asserted in any of the briefs that the Miranda issues were waived before the trial court but, instead, earnestly argued compliance with Miranda. (See Brief for Appellee at 22-23, State v. Ricky Wayne Tison, No. 4612 (Ariz.)).

Another fact which indicates, at a minimum, a lack of deliberate waiver of the Miranda and Sixth Amendment issues, is the existence of a long line of Arizona cases, culminating in State v. Edwards, 122 Arizona 206, 594 P.2d 72 (1979), rev'd, Edwards v. Arizona, supra, which recognized no difference between the issues of voluntariness and waiver. Under this Arizona case law as it existed at the time of the 1978 hearing on the motion to suppress, Arizona counsel had every reason to believe that a request for a voluntariness hearing also properly raised and preserved Miranda issues.

Petitioner Ricky Wayne Tison respectfully submits that the Miranda waiver issue merits this Court's attention not only because of the errors stated above but also because the time is ripe for this Court to eliminate the continuing confusion over the proper standard to utilize in determining when there is a intentional waiver by defense counsel of federal constitutional

rights in State trial court proceedings. Here the Arizona Supreme Court found such a waiver for failure to specifically assert the issue in the trial court, citing Michigan v. Tyler, 436 U.S. 499 (1978); Wainwright v. Sykes, 433 U.S. 72 (1977); Estelle v. Williams, 425 U.S. 501 (1976); and Henry v. Mississippi, 379 U.S. 443 (1965). (13a) Yet, Fay v. Noia, supra, at 439-440, found waiver only if there was a "deliberate by-passing" of the state's procedure for determining the issue in the form of a knowing and intelligent choice of the defendant himself. To the extent this rule is seen as modified by Henry and Wainwright in habeas corpus proceedings under 28 U.S.C. §2254(a), those decisions require an intentional action by defense counsel to bypass existing state procedures for determining federal issues. See e.g., Henry, supra, at 450. These opinions also assert that exceptional circumstances may preclude a finding of waiver regardless of the existence of intentional bypass "by counsel without prior consultation with an accused." Ibid. at 451. This case presents an excellent opportunity for this Court to establish as a matter of federal constitutional law whether simple failure to mention the Fifth or Sixth Amendments at argument in the state trial court constitutes deliberate waiver or abandonment of otherwise fully litigated federal issues and of whether this is the type of circumstance which precludes a finding of waiver under Henry.

Finally, this Court should also take this opportunity to reemphasize the constitutional standards for determining the voluntariness of petitioner Ricky Tison's statements under the flagrantly coercive atmosphere present during his questioning. This Court reiterated in Hutto v. Ross, 429 U.S. 28, 30 (1976) that the test of voluntariness "is whether the confusion was 'extracted by any sort of threats or violence, [or] obtained by

any direct or implied promises, however slight, [or] by the exertion of any improper influence.' Bram v. United States, 168 U.S. 532, 542-543 (1897) ... " In Bram, this Court held that a confession was involuntary in part because the statement offered in evidence was made either while or immediately after the defendant was stripped by the interrogating police officer. Bram v. United States, supra, 168 U.S. at 561-63. Similarly, in Malinski v. New York, 324 U.S. 401, 405 (1945), this Court said "[I]f the confession had been the product of persistent questioning while Malinski stood stripped and naked, we would have a clear case [of a coerced confession]." See also Culombe v. Connecticut, 367 U.S. 568, 622 (1961), where Justice Frankfurter reiterated for the Court that "the keeping of prisoners unclothed or standing on their feet for long periods during questioning" was deemed one of many "obvious, crude devices" for coercing confessions. In the face of these decisions, the trial court in Ricky Tison's case nonetheless held that his statements given while stripped and questioned repeatedly over seven hours were voluntary, and the Arizona Supreme Court agreed (17a).

III. This case presents the issue of whether it is a violation of due process for a state court to refuse to review the correctness of conspiracy instructions which were offered as a basis for convicting the defendant of murder, on the grounds that the defendant was not convicted of conspiracy.

The petitioners were neither charged with nor convicted of conspiracy. However, both juries were instructed as to the elements of conspiracy (Appendix Exhibits "M" and "N", 176a-183a) and were told that "A person who conspires with others to escape from legal custody, to avoid or prevent lawful arrest, to perpetrate or to attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy." (179a, 183a). The prosecutor seized upon conspiracy as a theory of vicarious liability in addition to the theory of aiding and abetting (Ricky's Tr. 2/27/78, pp. 572-3, 577-9, 581-2; Raymond's Tr. 3/2/79, p. 392). When combined with the felony murder instructions, the prosecutor was able to argue "that escape began on the 30th of July and continued until the time they were caught ... and because the defendant aided and abetted and because the defendant was a conspirator in the escape and because a killing occurred as part of that escape the State has proved that the defendant is guilty of first degree murder." (Ricky's Tr. 588); see Raymond's Tr. at 392-93, 395-96, 407, 410).

The conspiracy instructions were, however, fundamentally defective under Arizona law. Prior Arizona law had defined the elements of a conspiracy as "... an unlawful object to be accomplished, a plan embodying means to accomplish the object, an agreement between two or more persons, so that they are committed to cooperate for the accomplishment of the object, and an overt act." State v. Johnson, 120 Ariz. 170, 584 P.2d 1161, 1162

(1978). Furthermore, proof of an overt act is required by statute when the conspiracy does not have as its object arson, burglary or a felony against the person. Ariz. Code of 1939, 43-1102, Ariz. Rev. Stat. Ann. §13-332 (1956) (Repealed 1978). However, the trial judge failed to instruct either jury that it must find an actual plan embodying a means by which the object may be accomplished, or that it must find an overt act in furtherance of the conspiracy.

The Arizona Supreme Court, on review, found that petitioners' argument as to errors and omissions in the conspiracy instructions were "irrelevant" . . . "since appellant here was not convicted of conspiracy." (17a, 39a). It therefore refused to review the correctness of the instructions.

The Arizona Constitution guarantees a criminal defendant "the right to appeal in all cases." Ariz. Const. Art. 2 §24. When the death penalty is imposed, appeal is automatic and directly to the Arizona Supreme Court. State v. Richmond, 114 Ariz. 186, 560 P. 2d 41 (1976), cert. den. 433 U.S. 915 (1977). That court has repeatedly stated that in capital cases, it is required to "painstakingly examine the record" so as to ensure that the death penalty has not been improperly imposed. Id.; State v. Ceja, 115 Ariz. 413, 565 P. 2d 1274, 1276, cert. den. 434 U.S. 975 (1977).

This Court has repeatedly emphasized the critical nature of the instructions to the jury in criminal cases, Sandstrom v. Montana, 442 U.S. 510 (1979); Taylor v. Kentucky, 436 U.S. 478 (1978), and has on several occasions vacated criminal convictions where the jury could have convicted the defendant on the basis of an unconstitutional or erroneous instruction. See e.g., Stromberg v. California, 283 U.S. 359, 368 (1931); Mills v. U.S., 164 U.S. 644, 649 (1897). The Court should take this opportunity

to make clear that both the obligation of review Arizona has imposed upon itself and basic respect for due process of law require the Arizona Supreme Court to review the correctness of critical instructions given to a jury in a capital case.

IV. This case presents a fundamental issue which should be clarified by this court: What are the due process limits on a state's ability to impute criminal responsibility for murders which bear only the most tenuous causal connection to the acts of the defendant?

Both juries were instructed that aiders and abetters can be punished as principals (Ricky's Tr. 633; Raymond's Tt. 430), that a murder committed in avoiding or preventing lawful arrest or effecting escape from legal custody is first degree murder (Ricky's Tr. 637; Raymond's Tr. 434), and that a person who conspires with others to escape from legal custody or to avoid or prevent lawful arrest is responsible for acts committed by co-conspirators in furtherance of the conspiracy (Ricky's Tr. 635; Raymond's Tr. 433). The prosecutor was enabled to argue "that escape began on the 30th of July and continued until the time they were caught ... and because the defendant aided and abetted and because the defendant was a conspirator in the escape and because a killing occurred as part of that escape the State has proved that the defendant is guilty of first degree murder." (Ricky's Tr. 588; see Raymond's Tr. at 392-93, 395-96, 407, 410). Under this argument, someone who filled up the getaway car with gas before petitioners drove to the prison would also be guilty of first degree murder.

This case thus presents for review the issue of how broadly a state can define first-degree murder without violating fundamental rights of due process. Due process includes the right to be free of arbitrary action by the State. Slochower v. Board of Education, 350 U.S. 551, 559 (1956). At some point a person's causal connection with an event becomes too attenuated for him to be assessed with criminal responsibility for the event as a matter of federal constitutional law. Where someone who

conspires to aid and abet someone else's escape from prison can be held guilty of first degree murder and sentenced to death for a killing committed by the other thirty-six hours after the escape, that line has been crossed. This case presents a vehicle for this Court to clarify the due process limits on imputing responsibility for murders committed by another.

CONCLUSION

For the additional reasons stated above, Petitioners request that this Court grant their joint petition for writs of certiorari.

Respectfully submitted this the 9th day of November, 1981.

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CONTINUED APPENDIX

Exhibit L	Transcript of Suppression Hearing 12/4/78	108a
Exhibit M	Conspiracy Instructions in Trial of Ricky Wayne Tison	176a
Exhibit N	Conspiracy Instructions in Trial of Raymond Curtis Tison	180a

EXHIBIT L

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

THE STATE OF ARIZONA,	:	
	:	
PLAINTIFF,	:	
	:	
-vs-	:	No. 7979 & 8007 Consolidated
	:	
RANDY GREENAWALT, RAYMOND CURTIS TISON, and RICKY WAYNE TISON,	:	
	:	
	:	
DEFENDANTS,	:	

Florence, Arizona
December 4, 1978

BEFORE THE HONORABLE E. D. McBRYDE, JUDGE

With a Jury

APPEARANCES:

For the State:	Roy A. Mendoza, Esquire N. Victor Cook, Esquire
For the Defendant: (Randy Greenawalt)	Robert C. Brown, Esquire
For the Defendant: (Raymond Tison)	Harry Bagnall, Esquire
For the Defendant: (Ricky Tison)	Michael P. Beers, Esquire

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
MOTION TO SUPPRESS

Reported by:
Stanley T. Urban, Jr.
Official Court Reporter

the occurrence of the incident, and what has happened in between may have helped him out when he was looking at them but he is still relating clear back to the original incident when this occurred.

THE COURT: Any final argument?

MR. BEERS: I have no final argument.

THE COURT: All right. The finding of the Court is that Mr. Hodo stated this morning his identification this morning was made from his having observed the defendant on July the 30th, 1974, and it would be the Court's feeling and finding that the in-court identification of the defendant Ricky Tison by Mr. Hodo was not tainted in any way by the out-of-court procedures that may have taken place, so the motion is denied in this case.

MR. BEERS: Okay. Then I would like to continue with the motion to suppress, Your Honor.

THE COURT: Very well.

MR. COOK: Your Honor, at this time the State has agreed to go and call the witnesses and go forward.

THE COURT: All right.

MR. COOK: At this time we recall Officer Harville, Detective Harville.

JAMES HARVILLE,

called as a witness, having been duly sworn according to law testified as follows:

DIRECT EXAMINATION

BY MR. COOK:

Q. Could you state your name and occupation, please?

A. James D. Harville, Pinal County Sheriff's Department, Detective Division.

Q. How long have you been with the sheriff's office?

A. Close to three years.

Q. How long have you been involved in law enforcement?

A. In the sheriff's department, plus a year at the Arizona State Prison.

Q. Were you on duty at the sheriff's office on August 11, 1978?

A. Yes, sir.

Q. On that date did you have occasion to interview Ricky Wayne Tison?

A. Yes, sir.

MR. BEERS: Excuse me, Mr. Cook, at this time, Your Honor, I would like to invoke the rule. The remaining deputies that were present are still in the court room.

THE COURT: Are there other witnesses who are going to testify here this morning?

MR. COOK: Yes, there are, Your Honor.

THE COURT: Would you have them please come forward.

MR. COOK: Officers Solis, Salyer, Brawley, and Young, would you come forward and be sworn.

(Officers Solis, Salyer and Brawley were sworn.)

THE COURT: Gentlemen, I am sure you have been placed under the rule before, but you must remain outside the court room and do not discuss your testimony with the other witnesses, please. Thank you.

BY MR. COOK:

Q. Okay. Did you have an occasion to interview Ricky Tison on that day?

A. Yes, sir.

Q. Well, did you have occasion to interview Raymond Tison, also?

A. Yes, sir, I did.

Q. Which one did you interview first?

A. Raymond Tison.

MR. COOK: Your Honor, before I proceed I would assume that we would have the same hearing for Raymond Tison and that we could combine those two and do them at the same time, since the same interviews were taken.

MR. BAGNALL: That is correct, Your Honor.

THE COURT: Okay. We will proceed on both motions at this time.

BY MR. COOK:

Q. Now, approximately what time did you interview Raymond Tison?

A. Approximately zero five hundred.

Q. Can you describe what happened when you first approached

Raymond Tison?

A. Raymond was in the back of the pickup. I got him from the pickup and took him to Dan Martinez's vehicle. He was placed inside of Dan Martinez's vehicle. I advised him of his constitutional rights and then we started questioning him.

Q. Okay. Where was this interview taking place then?

A. At the scene on Chuichu.

Q. What was the condition of Raymond Tison at this time?

A. He seemed to be okay. I asked him if he had been hurt or anything and if he needed a doctor, and he said that his ribs were a little sore, but he didn't want a doctor. His only concern was for Ricky at that particular time. He was alert, coherent.

Q. You stated that you removed him from the back of a pickup?

A. Yes, sir.

Q. How was he dressed at that time?

A. He was nude.

Q. What did you do with him? You took him to Martinez's car?

A. Yes, sir, I did, Dan Martinez.

Q. Where were you located and where was Raymond Tison located?

A. Raymond was in the back seat on the left side of the vehicle directly behind the driver's. I was in the right front seat. Dan Martinez was also present directly

behind the steering wheel, and officer Solis was also present.

Q. What procedure did you use at that time?

A. In reference to advising him of his constitutional rights?

Q. Yes.

A. Yes, sir, I read the constitutional rights from the Miranda warning card.

Q. Do you have that card with you today?

A. No, sir, it was introduced in the court on the prior case with Greenawelt. I have a card, but not the same one.

Q. Is it the identical card as far as the questions?

A. Yes, sir.

Q. And what rights does that cover? Can you read it to us today? Is it here today?

A. Yes, sir. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish. You can decide at any time to exercise these rights and not to answer any questions or make any statements. Then it has the waiver and it says do you understand each of these rights I have explained to you? Having these rights in mind, do you wish to talk to us now?

Q. What was his response to those two questions?

A. He said that he understood his rights and he next said that he would like to see where he stands, first.

Q. What did you say after that? What did you interpret that to mean?

A. I didn't really know what it meant. So I asked him what, will you talk to us, again, and I asked him again will you talk to us.

Q. You repeated the last question on the card?

A. Yes, sir.

Q. What was his response at that time?

A. He says -- excuse me?

Q. Did he respond to you at that time?

A. Yes, sir, he did.

Q. Did he indicate that he was willing to talk to you?

A. Yes, sir.

Q. Had any threats or coercion been expressed to him by anyone?

A. No, sir.

Q. How about prior to that time from the time that you initially came in contact with Raymond, had you seen anybody making a statement to Raymond?

A. No, sir, I didn't.

Q. Or to anyone else in the back of the pickup at that time?

A. No, sir.

Q. How was Raymond dressed once you put him into the vehicle and did the interview?

A. During the interview he had a blanket around him, a big wool blanket, and I don't know who provided him with that blanket, but he was given a blanket.

Q. Was this when the interview initially started, or later on?

A. No, it was as soon as he got to the car. I don't know whether it was while we were in transit to the car, but when he was seated he had the blanket on him.

MR. COOK: I don't believe I have any other questions at this time.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BACHALL:

Q. With reference to time, what was the time? What time of day or night was this?

A. It was approximately 0300, sir.

Q. Do you recall what time the apprehension of the individuals took place, what time did the van get stopped, approximately?

A. Well, the first incident was at approximately 0256, I believe.

Q. About three o'clock in the morning?

A. Approximately, yes, sir.

Q. This was some two hours later; is that right?

A. Yes, sir.

Q. Do you know where Raymond had been in those two hours?

A. He was there at the scene in the back of the pickup.

Q. Were you there at the scene at all times while he was there?

A. Yes, sir.

Q. Did you come on the scene shortly after, around three o'clock?

A. Yes, sir.

Q. Did you have him in full view all the time?

A. No, sir.

Q. So you don't know who may have talked to him or said anything to him during all that period of two hours?

A. Yes, sir, that's right.

Q. You don't know?

A. I don't know.

Q. So that whether anybody made any threatening statements or remarks to him, you don't know at that point?

A. That's correct. I don't.

Q. All right. Now when you placed him in the car was it about five o'clock in the morning, and what was the weather like?

A. It was daylight. The sun was up, just the normal weather conditions for that particular time of the year.

Q. Did you inquire as to whether or not he needed anything to drink at that time?

A. I don't recall inquiring to that.

Q. And you don't recall whether he had had anything to eat or drink between the hours of three and five?

A. If so, I didn't see it.

Q. When he was seated in the right rear of the car, who was there? Was there anybody else in the back seat with him?

A. He was seated on the left side, sir.

Q. On the left rear of the car, excuse me, but was there anybody else seated in the back of the car with him?

A. Yes, sir.

Q. Who was that?

A. Detective Tom Solis.

Q. And Dan Martinez was behind the steering wheel?

A. Yes, and I was in the right front seat.

Q. Were you all dressed in Sheriff's uniforms?

A. Myself and Detective Solis were dressed in the S.W.A.T. uniforms. Detective Dan Martinez was in civilian clothes, as I recall it.

Q. Were you all armed?

A. Yes, sir.

Q. Were there any people standing outside, outside and near the car, any officers?

A. I requested that Officer McKenzie approach the car at the

time that I advised him of his constitutional rights, and as soon as I advised him of his rights, or shortly after that, Officer McMannis went away from the car. Now, there were people walking passed the car.

Q. Most all of them armed?

A. Well, I couldn't say whether rest of them were or not.

Q. Most of them were Sheriff's, or Highway Patrol personnel?

A. They were police officers, yes, sir.

Q. When you say that Raymond appeared to be in full possession of his faculties, he first said what to you, that he wanted to find out where he stood?

A. He said, "I would like to know where I stand, first."

Q. And then you asked him again "Do you want to speak with us"?

A. Yes, sir.

Q. And then he talked with you?

A. Yes, sir.

Q. Did any of the other officers who were in the car at the time you had this conversation with Raymond have anything to say to him?

A. Yes, sir.

Q. Who said what?

A. I don't recall who asked which questions.

Q. Now, you were the one that read his rights to him; is that correct?

A. Yes, sir, I am.

Q. And you asked him if he wanted to talk to you, and the first time he said he wanted to know where he stood, and the second time he started to talk to you? Who else was questioning him?

A. I'm not really sure I understand.

Q. Which of the other three officers, which of the other two officers were asking him questions?

A. All of us asked a question or two, or whichever. I don't recall which one asked which question. As soon as Raymond was in the car, I introduced him to all the officers as well as myself, and then that is when we advised him or I advised him of his constitutional rights. Then from that point on I asked questions, and also Solis asked some questions, and also Dan Martinez asked some questions.

Q. Prior to the time that Officer Solis asked a question, or prior to the time that Officer Martinez asked him a question, did they also read him his rights?

A. No, sir.

Q. So you were the only one that read him his rights; is that correct?

A. That's right, sir.

Q. How long did this conversation take place?

A. Approximately thirty minutes.

Q. Did you give any explanation or clarification of what the

Miranda warning meant after he said, "I want to see where I stand"?

A. No, sir. I just asked him again if he would talk to us.

Q. You asked him again if he understood the implications of all of the matters listed in the Miranda warning?

A. No, sir.

Q. You did not?

A. I asked him the first time if he understood each of his rights.

Q. Yes. And he said "Yes"?

A. Yes.

Q. He said, "I want to know where I stand"?

A. Yes.

Q. And then what was your reply to that?

A. That is when I asked him again if he would talk to us.

Q. You didn't ask him when he said "I want to know where I stand," whether he didn't really understand the Miranda rights?

A. No, I didn't. I didn't advise him of his rights again.

Q. Then you interrogated him for about thirty minutes, all three of the officers; is that correct?

A. Approximately thirty minutes, yes, sir.

Q. Did he have any change in his appearance, or his attitude from the time you first started talking to him and when you finished with him?

A. No, I don't think so.

Q. Do you know where he was placed afterwards, after you left him? How did you leave him?

A. I took him from that vehicle, and I am trying to think, I can't recall off hand whether I left him in that vehicle or took him out of the vehicle.

Q. If you left him there, who would have been staying there with him?

A. Well, I was asking various guards, or officers from around there, at the scene to provide various vehicles so that we could get the suspects into different vehicles and also that they would be there and watch them, also, and I don't recall which car he was left in and who was there.

Q. And after you left him, where did you go?

A. We next talked to Raymond, or, correction, Ricky.

Q. All right.

MR. BAGNALL: I have no further questions.

MR. COOK: I have just a couple more.

REDIRECT EXAMINATION

BY MR. COOK:

Q. How did the interview terminate?

A. They -- he said he had nothing else to add, and at that time, time was what we considered at that point extremely important, and we were trying to get as many of

the interviews conducted with the information that we was hoping to gain, so we just broke away from the interview. Then I went to the next one and got him.

Q. Did he ever invoke his rights and say, "I want an attorney, or I don't want to talk any more"?

A. No, sir.

Q. Once again, I can't remember if I asked you, but why did you repeat the question, "Do you want to talk to us," or whatever you said?

A. Well, I was looking for a yes or no, a yes or no answer, and I didn't really understand by, "I would like to see where I stand, first," I didn't understand that.

Q. Did you reread the card, the last line on the card, or did you just put it in your own words?

A. The second time I just put it in my own words. I said, "Will you talk to me?"

MR. COOK: I have no other questions, at least as to Raymond Tison. We will go on with Ricky, because he did the interview with Ricky, also.

BY MR. COOK:

Q. After you left Raymond, what did you do?

A. We next got Ricky and we put Ricky in the vehicle. Again, Officer Solis, Martinez, and myself, we were all three in the vehicle, and Officer Solis advised Ricky of his

constitutional rights.

Q. When you took Ricky from the truck, what was his physical condition at that time?

A. He was also nude, and he had a lot of blood on him, which was a concern, but he seemed to be alert, appeared coherent and alert.

Q. Did he have any trouble walking to the vehicle?

A. No, sir.

Q. What occurred once you arrived at the vehicle where you did take the interrogation?

A. Officer Solis advised him of his constitutional rights.

Q. Did Ricky also receive a blanket?

A. Yes, sir, he was also given a blanket, and he had it, if I recall, I think Ricky had it over mostly the lower portion of his body, and the upper portion of his body was still exposed and the blood was still there.

Q. What occurred after you got him there? Immediately did you just put him in the car, got him a blanket, and then did you ask any questions before his rights were read to him?

A. I was inquiring about his health because of the blood, and also from what Raymond had told me on the interview with Raymond, as to his physical condition, as to whether he was hurt or not, and he said he wasn't hurting. Officer Solis advised him of his constitutional rights.

Q. Can you tell us how he did that?

A. How he advised him of his rights? No, I can't. I don't know whether he read it. It sounded just like mine, but I don't know whether he read it from a card. He had one. He had one out, but I couldn't say that he actually read it.

Q. After he read him the rights, or advised him of his rights did Ricky make any statements to you?

A. Yes, sir. He started talking to us.

Q. Did he ever tell you that he did not want to talk to you?

A. No, sir.

Q. Did he ever make any such statement as Raymond had made?

A. Pardon me?

Q. Did he ever make such a statement as Raymond had made that he wanted to see where he stood?

A. No, sir, I didn't hear him.

Q. Did he ever invoke any of the Miranda rights?

A. No, sir.

Q. Did you ever see anybody make any threats to Ricky, or anyone else, for that matter, any of the three defendants?

A. No, not that I -- I don't recall anybody threatening him during the time that he was with us.

Q. When you were talking with Ricky, was he coherent?

A. He appeared to be coherent, yes, sir.

Q. Did he have any problems in talking with you that would cause you to believe that maybe he didn't understand what

he was doing?

A. No, sir, not whatsoever.

Q. How did your interview terminate with Ricky?

A. It just was no further information, and once again we wanted to go interview the third suspect, and the information, or the conversation was repeated over and over, so we just terminated. There was you know, nothing unusual about the termination.

MR. COOK: I don't believe I have any other questions at this time Your Honor.

CROSS EXAMINATION

MR. BEERS:

Q. What time did you arrive at the scene of the roadblock?

A. It was just shortly after the first call came out that the van had gone through the roadblock. We were just a few miles away from it at that time and we proceeded right away to it, possibly five or six, seven minutes.

Q. About what time was this?

A. Shortly after three, approximately.

Q. And what time did you interview Ricky?

A. Five thirty-one I believe, sir, approximately.

Q. When was the first time you saw Ricky that night?

A. I seen, well, not knowing who it was, I don't know one from the other, but I seen all of them at approximately

three fourty-five or four o'clock, something like that there.

Q. And where were they at that time?

A. They were at or in the area of the van and they were being taken from the van to the back of the truck.

Q. Did they have their clothes on at that time?

A. No.

Q. Do you know how their clothes were taken off?

A. No.

Q. Did you see them being put in the truck?

A. Some of it, yes.

Q. Did they have blankets with them in the truck?

A. No, sir.

Q. Did you see anyone talk to them while they were in the truck?

A. No, sir.

Q. How did Ricky get from the truck to the car?

A. When I went and got him for the interview?

Q. Yes.

A. He walked.

Q. And he was nude at this time?

A. I don't remember whether the blanket was given to him as soon as we extracted him from the truck or not, so I can't recall.

Q. But he did not have any clothes on?

A. Well, I can't recall, he wasn't clothed, but he could have had a blanket. I don't recall whether he came from the truck to the car with a blanket on him or not.

Q. How far is it from the truck to the car?

A. I don't know.

Q. Well, would it be more than ten feet?

A. Yes, sir, I think so.

Q. Would it be more than fifty feet?

A. I would have to say no, I don't believe it was, but I don't really recall.

Q. Can you give us your best estimate?

A. Well, I would say more than fifty feet, but once again, I don't really recall.

Q. Did Ricky have shoes on.

A. No, sir.

Q. Was this walk across the desert, or was it county road or what?

A. Across the road, it was on Chuichu Road.

Q. From one side of the road to the other side of the road?

A. Yes, sir, and slightly catty-corner, down, diagonal.

Q. You said Ricky was covered with blood. Would you describe in more detail what you mean by that?

A. He had a large amount of blood on the upper part of his body in the chest area. It was dried blood, none of it appeared to be fresh, and there was some blood on the

side of his neck.

Q. Did you have a doctor examine him prior to your questions?

A. No, sir.

Q. Did you ask him if he wanted a doctor?

A. Yes, sir.

Q. You personally never read Ricky his rights; is that correct?

A. That's correct, sir.

Q. Approximately how many officers were at the scene of the roadblock at the time Ricky was interviewed?

A. More than a hundred I would estimate.

Q. And there were three of you in the car with Ricky just like with Raymond?

A. Yes, sir.

Q. And who was sitting in the back seat with Ricky? Was that you?

A. No, sir, I was in the front seat. Officer Solis was in the back seat.

Q. And was Officer Martinez in the front seat?

A. Yes, sir, I think so.

Q. Did you tape record your conversation with Ricky?

A. No, sir.

Q. Did you take notes?

A. Yes, sir.

Q. Do you still have those notes?

A. No, sir.

Q. What did you do with them?

A. Well, after they are transposed into the form, the typed form that we have, we dispose of them, or I do.

Q. Would all three of the officers, including you, could all of you hear what Ricky was saying clearly?

A. Yes, sir.

Q. Did the other two officers take notes?

A. I believe they did.

Q. Do you know what they did with their notes?

A. No, sir.

Q. Were there any officers around the car at the time you interviewed Ricky, standing outside the car?

A. I honestly don't know, sir.

Q. Approximately how many vehicles were at the scene of the roadblock when you interviewed Ricky?

A. I don't know. There was just lots of them.

Q. You testified earlier that time was a concern. Would you explain that more fully?

A. Well, we had information that the van was seen at this pond, and that there was possibly somebody in that particular pond, and we were trying to obtain whether or not they had just been dropped off or possibly that they were still at the pond. We were trying to get as much of the information so that we could search the area for

the people that the van belonged to. At that time we didn't know who it was.

Q. So at the time you interviewed Ricky, you were primarily concerned with the location of the owners of the van; is that correct?

A. Yes, sir, and also another concern was Teresa Tyson.

Q. The location of Teresa Tyson, she was still missing at this time; is that correct?

A. Yes, sir.

Q. And you were also concerned with the location of Gary Tison, I presume?

A. Yes, sir.

Q. Do you feel that your concerns were probably similar to the concerns of the other two officers that interviewed Ricky?

A. I can't answer for Sergeant Martinez, but I do think that that was one of the major concerns with Officer Solis.

Q. And that was the primary direction of your questions, towards finding answers to those three problems; is that correct?

A. That's correct, sir.

Q. Do you know how long Donald Tison lived after he was shot?

A. No, sir.

Q. Did you ever say anything about Donald Tison to Ricky?

A. Did I say anything about Donald?

Q. Yes.

A. No, not that I recall, no.

Q. Did you ever hear anything said about Donald in Ricky's presence?

A. Yes, sir.

Q. What was that?

A. Something to the effect, well, Officer Dan Martinez, and I don't recall the quote but, we could take you back and show you Donald, or something to that effect. I don't remember the exact words, but it was something like that there.

Q. Was that before or after you interviewed Ricky when Mr. Martinez made that statement?

A. That was, I believe, well into the interview, and I think it was --

Q. But it was before the interview was over?

A. Yes, I think it was almost at the time it was concluded.

Q. Did you ever ask Ricky whether he needed anything to eat or drink?

A. No, sir, I don't recall asking him that.

Q. Did you ever ask Ricky if he wanted to get cleaned up?

A. No, sir.

Q. Did you ever ask Ricky if he wanted any clothes?

A. No, sir.

Q. Was it dark or light when this interview took place?

A. It was light.

Q. Do you know how long Ricky was held at the scene of the arrest after you interviewed him?

A. No. No, I don't.

Q. Well, do you know approximately what time he was taken back to town?

A. All I can say, it wasn't too long after we got through with the interviews, because we were trying to find vehicles to get him back, somebody to take him back to town.

Q. Did I ask you previously how many vehicles were at the scene?

A. Yes, sir.

Q. And, how many was that?

A. I said I didn't know, that it was over a hundred, and it was lots of them.

Q. So, do you have an opinion on why it took so long to take Ricky and Randy back to town?

MR. COOK: Your Honor, I am going to object, just because it is not relevant.

THE COURT: I really have no way of telling. If you know, go ahead and answer.

A. (The Witness) No, sir, I don't know.

MR. BEERS: I have no further questions.

MR. COOK: Just a couple, officer.

REDIRECT EXAMINATION

BY MR. COOK:

Q. What were most of the officers out at the roadblock doing during your interrogation; do you have any idea?

A. Well, I think most of them were involved in a search for Gary. There was a lot of people walking around going to and from the area where the command center was set up at.

Q. Were there ever any great numbers gathered around your car that you ever saw?

A. No, sir.

Q. When you asked Ricky if he needed a doctor, what did he state?

A. He said he wasn't hurt, and I asked him about the blood that was on him, and he told me it wasn't his.

MR. COOK: Okay. I have no other questions, Your Honor.

MR. BEERS: No further questions.

MR. MACHALL: I don't have any questions, Your Honor.

THE COURT: Thank you. You may step down.

MR. COOK: At this time we call Tom Jolis.

We would ask that Detective Marville be excused.

MR. BEERS: No objection.

MR. MACHALL: I have no objection, Your Honor.

THE COURT: Okay. You may be excused. Thank you, sir.

TOM SOLIS

called as a witness, having been first duly sworn according to law, testified as follows:

DIRECT EXAMINATION

BY MR. COOK:

Q. Would you state your name and occupation, please?

A. Tom Solis, detective, Pinal County Sheriff's Department.

Q. Were you working for the sheriff's office on August 11, 1973?

A. Yes, I was.

Q. On that date, did you have occasion to interview Ricky Tison?

A. Yes, I did.

Q. Do you recall approximately what time that was?

A. Approximately 5:30 a.m., August 11.

Q. When did you first come in contact with Ricky?

A. Just, oh, I would say an hour or so before that we started the interview.

Q. You had seen him at that time?

A. Yes.

Q. Okay. What I am asking is, when did you first start talking to him, and where did you meet him?

A. Okay. That was at Chuichu and Cocklebur Road, just a

little south of Cockleburr Road.

Q. What were you doing at that time?

A. We were out on a -- myself and Detective Marville were in the area there at the time when the roadblocks were set up, and after it was reported that a van had gone through the roadblocks, we arrived there soon after.

Q. Okay. When did you first -- where were you when you first started the interview?

A. We were in Detective Dan Martinez's car.

Q. This is with Ricky or Raymond?

A. With Ricky. I was in the back seat of Dan Martinez's car.

Q. How had you gotten to the car? Is that where you initially met Ricky?

A. No, I had met him earlier where the van wrecked, or where the wreck where the van was at, right after he was brought out from around the area of the van.

Q. Right after he was apprehended then?

A. Yes.

Q. Were you there when they did the search of him?

A. Yes.

Q. Were you there when they transported him from the area of the van, of the wreck, itself?

A. Yes.

Q. At any period of time did you ever see anyone make any threats to Ricky or Raymond?

A. Not that I can recall.

Q. What happened after they transported them? Where did they take them to from the scene of the wreck itself?

A. Okay. From the wrecked van, they took them -- or we took them back toward Cooklebur road, approximately a quarter of a mile.

Q. What did you do when you arrived at that destination at Cooklebur?

A. Okay. They remained in the back of the pickup until they were strip searched.

Q. Okay. During this procedure, did you see any threats?

A. No.

Q. Any coercion placed upon them, Ricky or Raymond?

A. No.

Q. After the strip search, what happened to them?

A. Okay. After the strip search, they were placed back in the pickup and then later on approximately around five o'clock, they were placed and seperated to different vehicles for the purpose of being interviewed.

Q. Okay. Which interview did you participate in at first?

A. Raymond Tison.

Q. And where was that?

A. That was in Don Mortimer's car that was parked on Chuichu Highway.

Q. Did you escort Raymond over to the car?

A. I believe myself and somebody else. I can't recall who.

Q. Do you recall if he had any problems walking to the car?

A. No.

Q. No, you don't recall?

A. I don't recall him having any problems.

Q. Okay. And once you were in the car, who read Raymond his rights?

A. Ed Herville.

Q. At any time did Raymond invoke his Miranda rights?

A. No, no.

Q. And was any coercion or threats used upon Raymond while he was in the car while you were present there?

A. No.

Q. Did anybody come and stand and look in the car or do anything that you ever observed?

A. Not that I recall, no.

Q. Did Raymond make a statement to you, not the text of the statement, but did he answer your questions?

A. Yes, he did.

Q. Were you going to say most of the questions?

A. Yes, most of the questions he answered.

Q. Did he ever during the questioning period state that he didn't want to talk to you any more?

A. No.

Q. That he wanted an attorney or anyone else?

A. No.

Q. How did the interview terminate? What caused it to stop?

A. We just -- at that point, I guess we just didn't ask him any more questions. We just decided to go ahead and terminate the interview at that time.

Q. What did you do after that?

A. We brought Ricky back there and started interviewing Ricky.

Q. Who read Ricky his rights?

A. I did.

Q. How did you do this? Did you read it from a card, or did you do it from memory?

A. I believe I had a card. I think I read from a card.

Q. Do you have that card with you today?

A. No.

Q. Do you recall what the card looked like? Do you have any set, standard cards, or did you borrow from somebody else?

A. We have standard cards.

Q. Is that the only card that you have ever carried?

A. I carried one most of the time, but usually that one.

Q. Have you ever seen Ed Harville's card?

A. I have seen him, yes, take it out in front of me.

Q. When he read Raymond his rights, were those the same rights that you advised Ricky of?

A. Yes.

Q. And did Ricky ever state that he wanted to exercise any of those rights?

A. No.

Q. Did he ever refuse to answer any of your questions?

A. No. He went ahead and answered most of the questions.

Q. Did you ever see Ricky invoke any of his rights?

A. No.

MR. COOK: I have other questions then.

CROSS EXAMINATION

BY MR. BAGNALL:

Q. What time did you actually arrive on the scene, right after three o'clock in the morning?

A. Right after, at three o'clock, somewhere around there. It was around 2:45 when we actually heard that.

Q. The roadblock had picked up a van?

A. Right, right. And we left our area approximately 2:45, and we arrived there either before three o'clock or right at three o'clock.

Q. All right. From three o'clock until five o'clock when you had this interview with Raymond, did you have Raymond under your continual observation during all that time?

A. Well, while we were interviewing him.

Q. No. Between the hours of three and five before you started the interviewing of him.

A. Yes.

Q. Did you have him under your personal continuous observation all that time?

A. No.

Q. So you do not, you can't say whether or not other individuals approached him and talked to him or threatened him?

A. No.

Q. When were the men strip searched before five o'clock, how long before that were they strip searched?

A. Before five o'clock?

Q. Yes, five o'clock at the time you started interviewing Raymond, how long back of it was it that they had been strip searched?

A. I would say approximately, probably around 4:30.

Q. About a half hour elapsed between the time they were searched and the time they were given a blanket, or Raymond was given a blanket?

A. Somewhere around there.

Q. Did you have an opportunity to closely observe Raymond, his manner and his manner of answering questions, the manner in which he acted?

A. Yes. Raymond you mean?

Q. Yes, Raymond, did he appear to be acting strange, or did he appear to be acting as though he had all his faculties?

Did he understand what he was doing? Did he seem to understand what he was doing?

A. Yes.

Q. Did you inquire as to whether or not he needed anything to eat or drink at that time?

A. Had he had anything to eat or drink?

Q. Did you inquire as to whether or not he had had anything to eat or drink?

A. Yes, I believe so.

Q. About when did you do that? Before the interview began, or after it began?

A. It was probably around during the interview or right after the interview.

Q. And if he responded, what did he respond?

A. I don't recall.

Q. Did you give him anything to eat or drink?

A. No, I didn't.

Q. Do you recall whether he said that he needed some food or something?

A. No, I don't recall him saying that he needed anything.

Q. But you recall the matter coming up in the conversation?

A. Yes.

Q. In the area or around the automobile where you were conducting the interrogation there were a number of police officers. Can you estimate to the best of your

recollection in the whole area how many police officers were in the area, sheriff's department, highway patrol, so forth like that?

A. There was quite a few, but I couldn't say.

Q. Did you see McKenzie around there at that time?

A. Yes.

Q. Did he have his dog with him?

A. No, I didn't see the dog.

Q. So you would say about a hundred officers?

A. Possibly.

Q. And how many varying different type of sheriff's cars, highway patrol cars, police vehicles, would you say were there from the close area where you had the interview?

A. I don't know.

Q. Your best estimate?

A. I would say a dozen or more or better.

Q. And they all had seals on them so you could tell they were police cars?

A. No, not all of them.

Q. Were most of the officers who were in the area in uniform and carrying weapons?

A. Yes.

Q. Were there any civilians in the area at all, any attorneys other than the county attorney's office?

A. No, not that I can recall.

Q. Were there any private lawyers around there any place?

A. I didn't see any.

Q. In the car with you there was Officer Harville and Officer Martinez; is that correct?

A. Yes.

Q. Now, you heard what officer read his rights to Raymond and asked him some questions and he answered some of Harville's questions; is that right?

A. Yes.

Q. When you questioned him, did you read him his rights?

A. No.

Q. When Mr. Martinez questioned him, did he read him his rights also?

A. No.

Q. Do you recall that when Officer Harville had finished reading his rights to Raymond and asked him if he wanted to talk to him that he said something like;"I would like to know where I stand," or something like that?

A. Seems like it, yes.

Q. What did Officer Harville say immediately after that?

A. It seems like he said, "do you want to talk to us now?"

Q. And then what happened?

A. And then he started talking.

Q. Have you discussed this matter at all with Officer Harville since the time, the morning when all this

happened?

A. This particular subject?

Q. Yes.

A. We had discussed the roadblock, and what, you know, during the interviews, right after that, but --

Q. You don't recall discussing this particular interview with him at any time?

A. No. He submitted his report and I submitted mine, and that is about it.

Q. Have you read his report?

A. No.

Q. Have you read Officer Martinez's report?

A. I think I did, briefly.

MR. MACNALL: I have no further questions.

CROSS EXAMINATION

BY MR. LEEPS:

Q. When Ricky was interviewed, did he have any clothes on?

A. No.

Q. When were his clothes taken off; do you know?

A. When they were strip searched.

Q. And approximately what time was that?

A. I would say approximately around 4:30.

Q. Were you present when they were strip searched?

A. Yes.

Q. How were their clothes taken off?

A. They were removed from them.

Q. Were they cut off?

A. Yes, part of them were.

Q. Were they cut off with a razor blade, with a knife?

A. With a knife, I believe.

Q. Would you explain why it was necessary to cut their clothes off?

A. Okay. The clothes were on pretty tight, and then they were still cuffed, so some of the clothes wouldn't come off just by taking them off. They had to be cut off. They was having a hard time taking them off.

Q. What was done with the shirt that Ricky was wearing?

A. I didn't hear you.

Q. What was done with the shirt that Ricky was wearing?

A. Okay. All the clothes, as they were being stripped down, I was trying to keep them straight for evidence, you know, and I was trying to keep up with all of it, so I would gather like all of Ricky's clothes and all of Raymond's clothes, and the other person there.

Q. Did you observe blood on Ricky's clothes?

A. Not that I remember.

Q. Did you observe blood on Ricky?

A. I believe he had some scratches on him, but very little blood.

Q. And you testified there were approximately a hundred

officers at the scene?

A. Yes, sir, I would say. I am not sure. There was quite a few.

Q. Would it be fairer to characterize the area as an isolated location?

A. Yes.

Q. Did you ever ask Ricky if he wanted anything to eat or drink?

A. I don't remember, I remember asking if he needed any medical attention of any kind. It seems like somebody did ask him, but I don't recall who or approximately when.

Q. Do you know approximately what time Ricky was taken back to town?

A. It was approximately seven, I believe. I could be wrong.

Q. He was arrested at approximately three; is that correct?

A. Yes.

Q. Would you explain why it took so long to take him back to town?

A. We were still trying to secure and trying to maintain the area there looking for the other suspect.

Q. Well, you didn't need Ricky's help to do that, did you?

A. I don't know.

Q. Did you take Ricky back a short time after he made the second statement to the officers?

MR. COOK. Your Honor, I am going to object to the relevancy

of this, talking about his statement at that point in time, and he has indicated he doesn't know what happened after that.

THE COURT: Try a different question. Would you ask the question again, please?

BY MR. EBERS:

Q. Is it correct that you testified that Ricky was taken back to town at approximately seven o'clock?

A. Yes.

Q. Do you know what was done with Ricky after you talked to him at 5:30?

A. Yes. Actually what I was doing, I was trying to assign people for transportation to Florence, and to the best of my knowledge I assigned some officers, for two officers each to take each individual seperately, and then I believe there was a factor there about the people at the roadblock, the roadblocks that were blocked coming in, there was quite a few, quite a few people there, and trying to get through.

Q. When did you first assign officers to take Ricky back to Florence?

A. It was approximately 6:30, somewhere in that area.

Q. Could you explain why nobody was assigned to take Ricky back to Florence earlier?

A. I don't know why.

Q. Do you know when Ricky finally got some clothes?

A. No.

Q. Did you ever make any statements to Ricky concerning his brother Donald?

A. Not that I recall.

Q. Did you ever hear anybody make any statements that Ricky might have heard concerning Donald?

A. No, I don't know.

Q. Was Officer Martinez in the car with you and Detective Herville when Ricky was questioned?

A. Yes.

Q. Does that refresh your memory concerning statements made about Donald that Ricky might have heard?

A. No, I don't.

Q. Did you tape record your interview with Ricky?

A. No, I didn't.

Q. Did you take notes?

A. Yes.

Q. Do you still have those notes?

A. I am not sure. I might have them.

Q. Do you normally keep the notes you make of interviews?

A. Most of the time I do, and a lot of times I just dispose of them as soon as I make a report, a formal report on them.

Q. You don't have any specific habit then as to what you do regarding your notes?

A. Do I have what?

Q. You don't have any specific habit, you don't always keep them or always destroy them; is that correct?

A. I usually keep them.

Q. Is there any policy in the Pinal County Sheriff's Department about keeping notes or destroying notes?

A. No.

Q. You made a report of this incident; is that correct?

A. Yes.

Q. Did you review that report before your testimony today?

A. I read it briefly.

Q. If you are recalled to testify in court, would you review that report prior to testifying in court?

A. Yes.

Q. You used that report to refresh your recollection, or do you actually remember what was said at this interview?

A. I usually read it to refresh dates and times, and this sort of thing, and most of the things I try to remember.

MR. BEERS: No further questions.

MR. BAGNALL: I don't have anything further.

REDIRECT EXAMINATION

BY MR. COOK:

Q. Did Ricky ever ask for his clothes, or any clothes?

A. I don't think so.

Q. Okay. On your notes, do you generally incorporate those

into your formal report?

A. Yes, I do.

Q. On this time in particular, do you recall leaving anything out of your formal report that was in your notes?

A. Not that I can recall. I tried to use about everything I had on those notes.

MR. COOK: I have no other questions.

MR. BEERS: Nothing further.

MR. BAGNALL: Nothing further.

THE COURT: You may step down. Thank you, Mr. Solis.

MR. BAGNALL: Release him?

MR. COOK: Yes, I would ask that he be excused.

MR. BEERS: No objection.

MR. BAGNALL: No objection, Your Honor.

THE COURT: All right. You may be excused.

Just time wise, should we break for lunch? Do you have some more witnesses?

MR. COOK: Yes, Your Honor, we have three other witnesses. I think we will probably just call two of them, but this appears to be as good a time as any to break for lunch.

THE COURT: What time, 1:30?

MR. COOK: That will be fine, Your Honor.

THE COURT: We will reconvene at 1:30.

(Court was then recessed at 11:55 a.m.)

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THE COURT: Okay. I understand Mr. Bagnall has waived his presence, since the remainder of the testimony does not concern his client; is that right, gentlemen? Do I misstate it?

MR. BEERS: That is my understanding, Your Honor.

THE COURT: He said he would be here as soon as possible.

MR. BEERS: Yes, Your Honor.

THE COURT: Is that all right, Mr. Tison?

RAYMOND TISON: Yes.

THE COURT: You may proceed.

MR. COOK: At this time we call Officer Salyer.

THE COURT: Is he here?

MR. COOK: Yes.

ELLIS SALYER,

called as a witness, having been duly sworn according to law, testified as follows:

DIRECT EXAMINATION

BY MR. COOK:

Q. Would you state your name and occupation?

A. Ellis Salyer. I work for the Department of Public Safety.

Q. How long have you worked there?

A. About fifteen years.

Q. Were you working for the Department of Public Safety on August 11, 1978?

A. Yes, I was.

Q. Did you interview Ricky Tison on that date?

A. Yes, I did.

Q. Approximately what time was that?

A. Approximately seven o'clock in the morning.

Q. And when did you first arrive on the scene?

A. Probably around 5:30.

Q. Where was this at, where did you interview Ricky at?

A. South of Casa Grande on Chuichu Road. I don't know the exact location.

Q. Where were you at when you did the interview? Were you in a car, truck?

A. It was in a sheriff's office vehicle, automobile.

Q. Do you recall who was present?

A. Myself and Agent Sanchez in the front seat, and Ricky in the back seat.

Q. And who read Ricky his rights?

A. Agent Sanchez.

Q. Do you recall which rights he read them, or did he read it off a card?

A. He read it off a card, I believe.

Q. Did you DPS officers use one standard card?

A. Yes, they do.

Q. And do you have your card with you?

A. No, I don't.

Q. Do you recall which rights Ricky was given?

A. The Miranda Rights, Sanchez gave it to him.

Q. Were they the full Miranda Rights?

A. I believe they were, yes.

Q. And did Ricky invoke his rights at any time?

A. No, he didn't.

Q. Did Officer Sanchez ask him if he wanted to talk to you at that time?

A. Yes, he did.

Q. And what was Ricky's response?

A. He just shrugged his shoulders.

Q. And then did he start talking, without telling me the text of what he said, did he then proceed to talk to you?

A. Yes, he did.

Q. At any time during your interview, were any threats or coercion or anything placed on Ricky?

A. No.

Q. Was it daylight at that time?

A. Yes, it was.

Q. Did Ricky have any clothes on?

A. No, he did not.

Q. Did he have a blanket?

A. No, he did not.

Q. At that point in time he didn't have a blanket at all?

A. No, he didn't.

Q. Where was Ricky when you first found him?

A. In the back seat of the sheriff's office car.

Q. So he was already sitting there, and you didn't take him out from anywhere else to transport him over there?

A. No, I didn't.

Q. Do you know if anybody had interviewed him previously?

A. I believe two of the sheriff's deputies had.

Q. Do you know if he talked to them or told them that he didn't want to talk to them?

A. I don't know.

Q. Did you ever see anybody use any type of threat or corercion on Ricky?

A. No, I did not.

Q. How long were you around the area where Ricky was sitting in the car?

A. Oh, from around 6:30 until they departed for Florence.

Q. And what time was that?

A. I would have to guess around eight o'clock.

Q. When you were out there, were there many people around the area where you were doing your interview at?

A. No, just the normal foot traffic back and forth.

Q. Was anybody paying very much attention to you at all or the car that you were sitting in?

A. No.

Q. Do you recall anybody coming up and talking to you or anything during that period of time?

A. No, I don't.

MR. COOK: I don't believe I have any other questions.

BY MR. BEERS:

Q. Officer, what time did you arrive at the scene of the roadblock?

A. I believe it was around 6:30.

Q. Could you tell us approximately how many officers were there at that time?

A. I don't have any idea.

Q. Would it be more than fifty?

A. I don't know.

Q. Could you tell us approximately how many vehicles were out there?

A. There was quite a few vehicles, twenty, twenty-five. I don't know.

Q. Did you notice any blood on Ricky?

A. Yes, I did.

Q. Where was it on his body?

A. On his chest and abdomen.

Q. Did you ask him if he wanted to have a doctor take a look at him?

A. We asked him if he was injured.

Q. Did you ask him?

A. Yes, I did.

Q. Did a doctor examine him prior to your questioning?

A. I don't think so.

Q. Did you ask him if he needed any food or water?

A. Yes, I did.

Q. Did you tape record your interview?

A. No, we did not.

Q. Did you take notes?

A. Yes, we did.

Q. Do you still have your notes?

A. I believe I have them in Phoenix.

Q. Do you normally keep your notes after an interview like this?

A. Yes.

Q. I asked you this earlier, I am not sure I asked you the proper way. Did you arrive out at the scene at 6:30, or did you just first see Ricky at 6:30?

A. I arrived at the scene somewhere between 6:00 and 6:30.

Q. After the sun was starting to come up.

A. Yes, it was light then.

Q. Who was present at the interview where you interviewed Ricky?

A. At first it was myself and Agent Sanchez. Shortly into

the interview Agent Sanchez was called away, and Al Stooks sat in with me.

Q. Did either you or Al Stooks or Agent Sanchez say anything about Donald Tixon during that interview?

A. Probably.

Q. Do you remember substantially what was said? I am not asking you for the exact words, unless you remember them.

A. No. I don't.

Q. Did it concern whether Donald was dead or alive?

A. It could have, yes.

Q. Well, try to remember it. Did it concern Donald?

A. Just going from memory, it could have been in the conversation, that is all I can remember.

Q. I am not trying to trick you, I am just trying to find out roughly what was said about Donald, what the context of it was.

A. I just -- I don't remember.

Q. Do you know why it took so long to take Micky back to Florence?

A. No, I don't.

MR. BEERS: I have no further questions.

REDIRECT EXAMINATION

BY MR. COOK:

Q. You said that you asked him if he wanted to see a doctor. What was his response?

A. He said he wasn't hurt.

Q. You asked him if he wanted any food or water; what was his response?

A. I offered to get him some coffee and a sandwich, and he refused.

MR. COOK: I have no other questions.

MR. EBERS: No further questions.

THE COURT: Thank you. You may step down.

MR. COOK: We would ask that this witness be excused.

THE COURT: No objection?

MR. EBERS: No objection.

THE COURT: You may be excused. Thank you, Mr. Salyer.

MR. COOK: At this time we call Tom Brawley.

TOM BRAWLEY,

called as a witness, having been first duly sworn according to law, testified as follows:

DIRECT EXAMINATION

BY MR. COOK:

Q. Would you state your name and occupation, please?

A. Tom Brawley. I am a detective lieutenant for the Pima County Sheriff's Office.

Q. Were you working in that position on August 11, 1973?

A. On August 11 I was assigned to the Arizona Investigative

Team.

Q. And what were your responsibilities at that time then?

A. I was supervisor of the team.

Q. On that date, did you have occasion to interview Ricky Tison?

A. Yes, I did.

Q. And where was the interview? Where did that take place?

A. It took place in the Pinal County Jail.

Q. Do you recall approximately what time that was?

A. About 12:45.

Q. And what were the circumstances surrounding your interview? Where did you interview him?

A. He was in a cell, beside a cell block.

Q. Was he awake when you did the interview?

A. Yes.

Q. Was he awake when you arrived?

A. Yes.

Q. What was his physical condition at that time?

A. I asked him if he was all right, and he said that he was.

Q. Did he appear to be alert, or did he appear drowsy?

A. No, he appeared to be alert.

Q. And did you notice anything unusual about his actions?

A. No.

(Mr. Bagnall then entered the court room.)

BY MR. COOK:

Q. What was he wearing at that time?

A. He wasn't wearing anything at that time.

Q. Did he have any blanket or anything else with him?

A. No.

Q. Can you describe how his physical appearance was?

A. Well, he looked all right to me.

Q. When you started your interview, what took place?

A. Well, first I introduced myself and Juan Young from the Department of Public Safety, and then I read him his rights.

Q. How did you read him his rights? Was that off the card or memory?

A. No, I read them to him off a standard form.

Q. Do you have that card with you today?

A. I didn't do it off a card, I did it off the printed form that contains a waiver, also.

Q. Okay. Did he sign the waiver?

A. No.

Q. What rights did you read him off that? Do you recall what they are?

A. That he had the right to remain silent, that anything he said could be used against him in a court of law, that he had the right to have an attorney, and if he couldn't afford an attorney we would get one for him, one appointed for him.

Q. At that point in time did you ask him if he understood those rights?

A. Yes.

Q. What was his response?

A. He stated that he did understand them. However, he didn't want to sign the waiver.

Q. What did you do at that time?

A. He told us that he didn't want to make a statement, and I told him that was fine, but there were some things that I would like to see if he wanted to talk about.

Q. What did he say?

A. Well, he went ahead and talked about some things.

A. So he went ahead and took over from there without asking any questions, or did you ask him another question after that?

A. Well, I made a statement that there was still some people missing and I would like to clear that up, and from that point on he started.

Q. Did he, without going into the text of the statements themselves, did he ever try to invoke his rights or state that he did not want to talk with you any further?

A. No.

Q. What caused the interview to terminate?

A. Well, it terminated after we had briefly gone through some things, and I had some answers, and there was

nothing more to be said, so it was just terminated.

Q. So you initiated the termination?

A. Yes, I think I did.

Q. Who else was in the area at the period of time of the interview?

A. Myself and Young.

Q. Did you see any other officers around?

A. No.

Q. Were there any coercion or threats used to get Ricky to talk to you?

A. No.

Q. Did you ask him if he had seen a doctor?

A. I believe I did ask him that initially, and then I was asking him if he was all right and he said that he was.

MR. COOK: I don't have any other questions then, Your Honor.

CROSS EXAMINATION

BY MR. BEERS:

Q. Did Ricky have any clothes on at this time?

A. No.

Q. Did he have a blanket or anything?

A. No.

Q. Did you tape record this interview?

A. No, I didn't.

Q. Did you take notes?

A. Pardon me?

Q. Did you take notes?

A. Yes, some.

Q. Do you still have the notes?

A. I believe they are in the files, I am not sure.

Q. Do you normally keep notes like this after an interview?

A. Yes.

Q. Do you normally interview your interviewees when they are nude?

A. I interview the interviewee however he is whenever I can talk to him.

Q. Did you ask him if he wanted to put some clothes on?

A. No, I didn't.

Q. Did he have any blood on him?

A. Yes.

Q. A lot of blood, a little blood?

A. Oh, I just noticed some dried blood on him.

Q. Did you ask him if he wanted to get cleaned up?

A. No.

Q. You were not at the scene of the roadblock, were you?

A. No, I wasn't.

Q. Did you notice that he had all ready talked to other officers?

A. At the time probably I did.

Q. Did you make a report that consisted of the substance of

the statement?

A. Yes.

Q. Do you know if Mr. Young made the same type of report?

A. No, he didn't. We made the report together.

Q. And you both signed it, I presume?

A. Yes.

Q. You testified that Ricky refused to sign the waiver. What does the waiver say?

A. Not verbatim, but the waiver simply says that he has been advised of his rights, he understands what they are, and that he is willing to make a statement, to give up the right to an attorney.

Q. And he refused to sign that?

A. Yes.

Q. Didn't that give you some indication that maybe he didn't understand his rights or maybe he wasn't really ready to waive them?

A. No, I didn't get that feeling at all.

MR. BEERS: No further questions.

REDIRECT EXAMINATION

BY MR. COOK:

Q. Is it unusual for someone to refuse to sign the statement yet go ahead with an interview?

MR. BEERS: I will object. There is not enough foundation for that question.

THE COURT: Sustained.

MR. COOK: I have no other questions.

May this witness be excused, Your Honor?

THE COURT: I assume so.

MR. BEERS: No objection.

THE COURT: Thank you. You may be excused.

MR. COOK: We have no other witnesses, Your Honor.

THE COURT: Okay. Mr. Beers?

MR. BEERS: Your Honor I move to suppress all three of the statements that Ricky allegedly made.

The basis of my motion is that the statements were not voluntary. I am not alleging that anybody -- I have no further witnesses, I will go on into my argument.

I am not alleging that anybody held a gun to Ricky's head and said "talk, or else," but I am claiming that the totality of circumstances of which the statements were taken were so intimidating that no normal person would have had enough nerve to invoke his right to remain silent.

There were hundreds of officers out there. These boys had just had their clothes forcibly cut off of them with a knife. They were being held totally nude and had been held nude for quite some time. They were being held out in the middle of the desert for no apparent reason. They were arrested at approximately three o'clock and were held until approximately seven o'clock. Nobody testified as to why they

were held so long, but the coincidence of the times indicates to me, at least, that they were held till they talked. As soon as Mr. Salyer finished his interview with Ricky, they were transferred back to Florence at seven o'clock.

I think that this type of feeling, these types of vibrations from the various police officers will surely come across to anyone that was being questioned by them, particularly when the person is held without any clothes, covered with blood, not knowing for certain the status of his wounded brother. Now, one of the men testified that Officer Martinez said we will take you to see Don. I don't know exactly what that means, but it could be taken to mean that is what happened to your brother, if you don't want to talk to us, you don't have to, but --

I think when you look at every circumstance, hundreds of officers, held in the desert, the situation with Donald, the fact that none of these interviews were even tape recorded, there might be some confusion as to what was actually said, that argument applies primarily to the statement that was taken at 5:30. The statement at 6:30, again there was some talk of Donald, Ricky was still nude, still had blood on him, the officer that took that interview doesn't seem to remember much of anything else regarding any of the circumstances of the interview, and finally the statement at 12:45 back at the jail, Ricky has still not been

given any clothes, he has still got blood all over him, and most importantly at this statement he refused to sign that waiver.

Now, he orally said he understood the rights and waived them, but the action of refusing to sign that waiver indicates that he either did not understand the rights or he wasn't ready to waive them.

Most laymen are brought up in the assumption that when legal matters are involved, everything has to be in writing, and I strongly suspect that his refusal to sign that waiver indicated that he was not ready to waive those rights, and I do know that under the law when all the circumstances are looked at, the statement is not really voluntary, and it should be suppressed, and I think that is the case with all three of Ricky's statements.

THE COURT: All right. Mr. Pagnell?

MR. PAGNALL: Do you want to respond to them first?

MR. COOK: Go ahead, and I will respond to both of them.

MR. PAGNALL: If it please the court, basically the intimidation indicated by Mr. Beers has, I think, to borrow a phrase from him, the totality of the circumstances where the men were -- the circumstances under which they were

being held even having had their clothes ripped off, and in a situation where there were over a hundred officers, all of them armed, in the area, there was no apparent -- anyone else that if they had wanted to turn to somebody for advise or to say "let me talk to somebody about this thing," there was nobody there. They were in an area where they were totally covered on all sides by police officers and actually a person wouldn't have had to have anything said to him to intimidate him. He was physically intimidated just by the circumstances that existed at the time.

On that basis, I ask that the statements made by Raymond as evidenced to the officers that testified this morning, that they be suppressed also.

MR. COOK: Your Honor, the statements as they were given are voluntary. They were made in an area where there were many officers around, but that is no different than being in a police station where there are also many officers around. Most of the officers were not paying any attention to the car, to the interviews, they were traveling back and forth. Gary Tison was still on the loose, and the main purpose that the officers were involved in was that of finding Gary Tison.

All of the people were read their Miranda Rights, they all voluntarily talked, they made their statements not once, but three different times, and a couple of them in one

car, and then clear back at the station afterwards when they did finally come back to the Sheriff's Office. They were offered a blanket, they were offered food. They were all checked out to see if they had any problems, if they needed a doctor. There has been no evidence here to the contrary other than the fact that they were treated fairly well under the circumstances. There have been no evidence of any threats or that anybody used violence on them.

Tom Tolis picked them up from when they were captured and brought them on up. He was with them at all times, but each of the officers when asked if they observed any threats or coercion used against them indicated that they hadn't seen any. No one had contradicted that.

The location, itself, simply can't be considered as that coercive enough to suppress a statement when all other indications are that it is voluntary. It is out in the desert and it is late, but so are statements which are given in an interrogation room in the police department or sheriff's office.

As to their physical appearance and whether or not they were injured from the accident, apparently they weren't. They all appeared to be alert, they were coherent, they indicated that they knew what the rights were and then they proceeded to talk and made the statements after each of them were read the Miranda Rights in full.

There simply hasn't been any testimony or any evidence to the contrary that the statements should be suppressed.

THE COURT: Any final remarks?

MR. BERNS: I have nothing further to add to what I said before.

MR. BAGBALL: I have nothing further, Your Honor.

THE COURT: Gentlemen, based upon the state of the record, the court in all candor would have to find that the statements made by the defendants, Ricky Tison and Raymond Tison, on August 11 to law enforcement personnel were freely and voluntarily made. I think they understood their rights and they waived them.

I have also had a motion to suppress pending for Mr. Greenawalt.

MR. BROWN: Yes, Your Honor.

THE COURT: And I again have read Mr. Brawley's deposition. Was there anything else on that particular motion?

MR. BROWN: Your Honor, my understanding was that there were to be no more arguments. I would not object to arguments at this time, but Mr. Irwin is not here to respond. It would probably be impropriety.

THE COURT: It was my understanding that it would be submitted upon receipt of Mr. Brawley's deposition. I

have reviewed that. I have reviewed my notes, and the witnesses who testified.

At this time I will make a finding that the statements made by the defendant Greenawalt on August 11 to law enforcement personnel both at the scene of the arrest and here at the Final County Jail were made freely and voluntarily. I think he understood and waived his constitutional rights.

With those findings, gentlemen, do you have anything else to discuss this afternoon?

MR. BROWN: Your Honor, as to that ruling the court just made, my understanding is that that ruling is made in the Yuma County case, or is it made in this one also?

THE COURT: It is my understanding, gentlemen, I believe the stipulation in open court that the state intended to use no statements of Mr. Greenawalt in this case, but it was also my understanding prior to hearing this motion that my findings would be binding in both this case and the Yuma County case.

MR. BROWN: Right.

THE COURT: One other matter I have gentlemen, very frankly, at least I assume the state has or will, the defendant has submitted requested voir dire questions for the court to ask the jury panel, or perhaps if I permit it the attorneys themselves. Have you filed yours?

MR. COOK: I haven't submitted a copy of the questions. No, Your Honor.

THE COURT: The more important matter is if in fact we use a written questionaire to be filled out by the jury, I would ask you gentlemen to get together and prepare one comprehensive questionnire sheet. I don't think I should give them two questionaire sheets, and I believe that if you gentlemen would get together and prepare that I will consider letting the prospective jurors fill it out. Do you see any problems there?

MR. COOK: Your Honor, we have discussed it at least one time, and then we both went back and prepared one of our own, and they do differ. If you would be available this afternoon so we can come in and let you do a little arbitration, take a few of them out or let them in, I think that would be helpful.

THE COURT: Why don't you both bring your questionaire sheets in chambers and we will go over them, and I will indicate which ones I will hear.

MR. DEERS: There is one more thing, Your Honor.

THE COURT: All right.

MR. DEERS: There was at least one other witness out in the prison that we need a Dessuresult Hearing on. Due to some confusion between me and Mr. Cook, we called the wrong guy over. We agreed that if a Dessuresult Hearing on

any other witness is necessary, we can do it on the morning before he testifies.

THE COURT: I will trust you gentlemen to see that we do that before the witness is called.

MR. BERNS: Yes, Your Honor.

MR. COOK: There is a statement also from a young lady who was at the Yuma County Jail, and we didn't bring her up there for the same reasons. I have talked to Mr. Bagnall, and if we need to we will make a determination at that time. At this point in time the state is not even sure we are going to call her as a witness.

MR. BAGNALL: That is true.

THE COURT: Also, if you wish to use any of the statements we have just discussed today, Mr. Cook, we obviously have to go over them and see what portions should be excised.

MR. COOK: That's correct, Your Honor.

THE COURT: So do you want to do that this afternoon, or what?

MR. BROWN: Your Honor, I might inform the court, Mr. Moorehouse was just in here. I am due to finish a preliminary hearing in Casa Grande at three o'clock, or as soon as we can get there afterwards, we are trying to get that done before we start into this other so that person won't be held without a determination of probable cause while

this is going on. It could be Mr. Cook and I could get together on the questionaires, something like that. We are both reasonable people with the court indicating something of what they wanted. I think we can probably resolve the issues.

THE COURT: Yes, I think you both can work out a question, give a little and take a little.

MR. COOK: As to the statements, also, I think we can do that one evening after jury voir dire which will take several days, I am sure.

THE COURT: Okay. As far as we are concerned, we will have the jury here at 9:30 in the morning, gentlemen, and I understand arrangements have been made for your clients to be here prior to that time.

MR. BROWN: Somewhat before that.

THE COURT: I will see you all tomorrow.

(Court was then recessed.)

I HEREBY CERTIFY that I made a stenotype record of the proceedings had in the foregoing matter; that the said stenotype record is full, true and accurate; and that the foregoing 81 pages constitute a full, true and accurate transcript of the same to the best of my skill and ability.

STANLEY J. URBAN, JR.
OFFICIAL COURT REPORTER

EXHIBIT M

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA, Plaintiff, vs. RICKY WAYNE TISON, Defendant.	NO. 9299

Yuma, Arizona

BEFORE: THE HONORABLE DOUGLAS W. KEDDIE
Judge of the Superior Court
Division Three, Yuma, Arizona

VOLUME FIVE

good character together with all the other evidence. If you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged you must not use evidence of good character as an excuse to acquit the defendant.

Running away or hiding after a crime has been committed does not in itself prove guilt. You may consider any evidence of the defendant running away or hiding together with all the other evidence.

If you determine that the defendant possessed property recently stolen from the individual that is one circumstance you may consider in reaching your verdict; however, this circumstance alone is not enough to permit you to find the defendant guilty.

All persons concerned in the commission of an offense whether they directly commit the act constituting the offense or aid and abet in its commission though not present are responsible for the commission of the offense.

Circumstantial evidence is the proof of fact or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of a defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at a verdict.

A conspiracy is an agreement between two or more persons to commit a public offense or crime. One may become a member of a conspiracy without

full knowledge of all the details of the conspiracy. On the other hand a person who has knowledge of a conspiracy, but happens to act in a way that furthers the object or some of the conspiracy does not thereby become a conspirator. Before you may find that the defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person who has claimed to have been a member wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So if a defendant or any other person with the understanding of the unlawful character of the plan knowingly encourages, advises, or assists for the purpose of furthering the undertaking or scheme he thereby becomes a wilful participant conspirator. One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed you should consider the actions and

declarations of all the alleged participants. It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other facts may be proved by either direct testimony of the fact or by circumstantial evidence or by both direct and circumstantial evidence.

The acts and statements of a conspirator when said or done in furtherance of the conspiracy and during its continuance are binding on all participants in the conspiracy; however, the acts and statements of the conspirator are not binding on other participants in the conspiracy if they occur after the object of the conspiracy has been consumated.

A person who conspires with others to escape from legal custody, to avoid or prevent lawful arrest, to perpetrate or to attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

Theft of a motor vehicle is committed by taking from another a motor vehicle with the intent to deprive the owner of possession. Such intent may be to permanently deprive the owner of possession or to temporarily deprive the owner of possession. If you determine that the defendant took the motor vehicle from

EXHIBIT N

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,
Plaintiff,
vs.
RAYMOND CURTIS TISON,
Defendant.

NO. 9299

Yuma, Arizona

BEFORE: THE HONORABLE DOUGLAS W. KEDDIE
Judge of the Superior Court
Division Three, Yuma, Arizona.

VOLUME THREE

SUPERIOR COURT
YUMA, ARIZONA

inferences from the facts brought out in evidence: however, if an inference which you might make is based upon an underlying inference which you have made from the facts, then the first inference must be established to the exclusion of any other reasonable theory rather than being a probability before you may make the second inference.

A conspiracy is an agreement between two or more persons to commit a public offense or crime. One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand a person who has knowledge of a conspiracy, but happens to act in a way that furthers some object or the purpose for the conspiracy does not thereby become a conspirator.

Before you may find that the defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person who was claimed to have been a member wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done. That is to say, to act or participate with the bad purpose to either disobey or to

disregard the law, so if a defendant or any other person with the understanding of the unlawful character of a plan knowingly encourages, advises, or assists for the purpose of furthering the undertaking or scheme he thereby becomes a wilful participant conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed you should consider the actions and declarations of all the alleged participants. It is not necessary in proving a conspiracy to show a meeting of alleged conspirators or the making of an express or formal agreement.

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The acts and statements of a conspirator when said or done in furtherance of the conspiracy and during its continuance are binding on all participants in the conspiracy; however, the acts and statements of a conspirator are not binding on other participants in the conpiracy if they occur after the object of the conspiracy has been consummated.

A person who conspires with others to escape from legal custody or to avoid or prevent lawful arrest, to perpetrate or attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

Theft of a motor vehicle is committed by taking from another a motor vehicle with the intent to deprive the other of possession. Such intent may be to permanently deprive the other of possession or to temporarily deprive the other of possession. If you determine that the defendant took a motor vehicle from another you must then determine whether he meant to temporarily or permanently deprive the person of its possession. If you find the defendant intended only to deprive the person of its possession temporarily you must find the defendant not guilty of the theft of a motor vehicle with the intent to deprive the owner of its possession permanently.

Armed robbery is the taking of personal property in the possession of another from his person or immediate presence and against his will accomplished by means of force or fear with a gun or deadly weapon.

A person who seizes, confines, inveigles, entices, decoys, abducts, conceals, or carries away an individual by any means whatsoever with the intent to hold or detain or who holds or detains any individual for ransom, reward, pecuniary benefit, or otherwise or as